

1 JACK GORDON; SBN 169380  
2 95 S. Market St., Ste 300  
3 San Jose, CA 95113  
4 Tel. (408) 286-1351  
5 Fax. (408) 977-7783

6  
7  
8 Attorney for Defendant,  
9 Huy Ngo

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

20 UNITED STATES OF AMERICA,

21 No. CR-07-00289-RMW  
(CR-07-0290)

22 Plaintiff,

23 vs.  
24 NOTICE OF MOTION AND  
25 MOTION FOR RECONSIDERATION  
HUY NGO,  
26 OF PRETRIAL RELEASE STATUS  
Defendant.

27  
28 /

18 INTRODUCTION

20 Please take notice that on December 20, 2007, at 2:00 p.m.  
21 before the Honorable Patricia Trumbull, the defendant Huy Ngo will  
22 move said Court to reconsider its earlier detention order and so  
23 release him on a combination of reasonable bail and supervised  
24 release. This motion will be based on the following memorandum of  
25 points and authorities, declaration of counsel, testimony to be  
26 taken at the hearing, as well as the records and files in this

matter.

Defendant NGO is currently held in federal custody under two indictments (now related cases) charging a violation of three federal statutes; 1) 21 U.S.C. sec. 846, 841(b)(1)(B)(iii) - Conspiracy to Distribute, and Possess with Intent to Distribute Cocaine; 2) 21 U.S.C. sec. 846, 841(b)(1)(B)(iii) - Attempted Possession with Intent to Distribute Cocaine Base; and, 3) 21 U.S.C. sec. 846, 841(b)(1)(C) - Conspiracy to Possess with Intent to Distribute and to Distribute MDMA.

This Court denied defendant Ngo pre-trial release after a detention hearing held on October 1, 2007. At that detention hearing it is believed the Court learned that defendant Ngo is married with two teenage children, a long time resident of California, had a job before his arrest and has one waiting for him upon his release, has a strong support network of friends and family and suffered his prior felony conviction back in 1994. What neither Court nor counsel could have been aware of was the information contained within the discovery presented to defense counsel after the detention hearing.

MEMORANDUM OF POINTS AND AUTHORITIES

A magistrate has the authority to reopen a detention hearing to take additional evidence at the request of counsel. (U.S. v. Gallo, 653 F.Supp.320 (E.D.N.Y. 1986), hearing may be reopened if new information becomes available, see U.S. v. Leon, 766 F.2d 77,

80 (2<sup>nd</sup> Cir. 1985)

While familiarizing himself with this case defense counsel (defendant Ngo's second attorney who was not present at the initial detention hearing) discovered that this Court learned, to some degree, of defendant Ngo's family and community ties and was quite concerned about the handgun found in the Ngo home.

Information gleaned from provided discovery minimizes the danger and purpose of this firearm and should assuage the Court's concerns as to the danger that defendant Ngo presents to the community.

The defense will present proffers and or witness testimony regarding the handgun and the level of danger that defendant Ngo presents to the community.

## CONCLUSION

After the Court has learned what is in the provided government discovery and heard what the witnesses have to say about him, defendant Ngo is confident that this court will modify his custody status and admit him to pre-trial release.

Respectfully submitted,

Dated:

Jack Gordon  
Attorney for Defendant

1  
2  
3 DECLARATIN OF ATTORNEY JACK GORDON

4 1. I am the attorney of record in the above action;  
5 2. I am Mr. Ngo's second attorney and did not take part in the  
6 initial detention hearing;  
7 3. In speaking with Mr. Ngo's prior attorney and his family  
8 members it appears that one of the Courts major concerns was a  
9 firearm found in the Ngo home;  
10 4. Discovery provided by the government supports the position of  
11 Mr. and Mrs. Ngo as to the status of said firearm.  
12 5. I informed AUSA Jerich by voice mail of this motion on 12/13/07  
13 and/or 12/14/07, and faxed a copy to her office on 12/15/07.

14  
15 I declare under penalty of perjury that the foregoing is true  
16 and correct.

17  
18 Dated: 12/15/07

19 \_\_\_\_\_  
20  
21  
22  
23  
24  
25  
26  
27  
28 Jack Gordon